



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

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James R. Bayes
202.719.7064
jbayes@wileyrein.com

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

**Re: Notification of *Ex Parte* Communication,
Request by State Broadcasters Associations for Declaratory
Ruling Concerning Application of the Commission's Political
Programming Regulations to Three Internet "Airtime Sales
Programs," MB Docket No. 07-137**

Dear Ms. Dortch:

On September 15, 2010, David Newmark, President and Chief Executive Officer of Bid4Spots, Inc. ("Bid4Spots"), along with James Bayes and Martha Heller of Wiley Rein LLP, met with Robert Baker and Hope Cooper of the Policy Division of the FCC Media Bureau.

The meeting participants discussed the manner in which Bid4Spots operates and the positions taken by Bid4Spots in its comments in the above-referenced proceeding. Specifically, the participants discussed Bid4Spot's belief that the *ad hoc* groups of stations created in each of its auctions should be treated in the same manner as a traditional or a "non-wired" network for purposes of the FCC's political broadcasting rules and, accordingly, that participation in Bid4Spot's Internet auctions should not alter the Lowest Unit Charge ("LUC") obligations of individual broadcast stations. In this regard, Mr. Newmark and counsel reiterated that Bid4Spots is analogous to a network because (1) the rates available to advertisers via Bid4Spots would not be available to an individual station's "most favored advertisers"; (2) broadcast stations do not deal directly with advertisers via Bid4Spots; (3) advertisers do not have the ability to select specific stations when using Bid4Spots; (4) auctions result in a group of at least two stations selling spots to fulfill the order of a specific advertiser; and (5) the rates ultimately charged to advertisers are not within the direct control of participating stations.¹

With respect to the last point, Mr. Newmark explained that the "PowerBidder" function used by Bid4Spots determines the rates ultimately charged to advertisers.

¹ See Michael H. Bader, 56 FCC 2d 840 (1975); Robert L. Olender, 61 FCC 2d 694 (1978).



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PowerBidder is a computer algorithm that determines, for stations participating in multiple auctions simultaneously, which auctions will maximize placement of a station's spots in the overall auction process. Once a station opts in to a specified group of auctions and thereby commits a specified amount of inventory to the auction process, the PowerBidder function takes over and allocates the inventory made available by stations according to the parameters set by the advertisers. Although stations establish a threshold per spot rate that they will accept for each daypart that is being committed to the overall auction, they are not able to set the rates ultimately charged to any specific advertiser.²

In addition, Mr. Newmark and counsel explained that, contrary to the concerns raised by one commenter in the above-referenced proceeding, viewing Bid4Spots as a non-wired network would not establish a broad precedent that would apply to broadcast airtime sold by any advertising sales firm that deals with multiple station clients. In the vast majority of cases, national "rep" firms act as intermediaries or agents for individual broadcasters in their efforts to sell time to advertisers or advertising agencies, thereby augmenting the station's own sales staff, facilitating time sales outside of a station's market, and reducing transaction costs for the parties. In these more typical situations, the rate charged to an advertiser is simply the aggregate of the individual rates of the stations represented by the agency. Bid4Spots understands that, when a time sales organization serves as an agent to an individual broadcaster in this manner, the rates charged to advertisers would be accounted for in a station's LUC. By contrast, some national sales firms or other entities occasionally assemble *ad hoc* groups of stations in order to meet the overall audience reach and other marketing needs of a particular advertiser. The FCC previously has established that the group or network rate for such multi-outlet sales is not considered in calculating an individual station's LUC.³ For the reasons stated above, this type of service is directly analogous to Bid4Spot's Internet auctions and, accordingly, participation in Bid4Spots similarly should not affect an individual station's LUC.

² In previous comments in this proceeding, Bid4Spots noted that it provided broadcasters and advertisers with a post-auction "SpotFill" feature. See Supplemental Comments of Bid4Spots, Inc., MB Docket No. 07-137 (Jan. 22, 2008). Bid4Spots no longer offers this service.

³ See *Bader*, 56 FCC 2d 840 (noting that "where a national time sales organization, which does not sell time on individual stations, purchases time on a 'defined group of stations' wherein each station charges a rate that would not be available to that station's most favored commercial advertiser for the purchase of time for that station alone . . . such a transaction would not be considered in an individual station's lowest unit charge....").



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Mr. Newmark and counsel also reiterated Bid4Spot's position that its reverse auction system fulfills the objectives of the Commission's other political broadcasting policies.

Please direct any inquiries concerning this matter to the undersigned.

Respectfully submitted,

 /s/
James R. Bayes

cc via email: Robert Baker
 Hope Cooper